IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Rahmatullah
vs.
Mehardin Khan and others.

S.B.CIVIL SECOND APPEAL NO.98/2002 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 2.3.2002 PASSED BY SHRI LEELADHAR SWAMI, DISTRICT JUDGE, JAISALMER IN APPEAL DECREE NO.24/2001.

DATE OF JUDGMENT ::: 21.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the appellant.
Mr. S Sharma, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/appellant filed a suit for permanent injunction against the respondents/defendants. The plaintiff alleged that he is owner of the property in

dispute for which the Gram Panchayat issued patta in his favour on 15.4.1988 on payment of Rs.85/-. According to the plaintiff, he constructed a room over the plot in dispute and he was in occupation of the plot till 5.5.1996. On 5.5.1996, the defendants and some other persons came on the plot of the plaintiff and started demolishing the boundary of the plot. The plaintiff lodged FIR and thereafter filed suit for permanent injunction.

The defendants submitted written statement and denied the possession of the plaintiff over the plot in dispute. The defendants also submitted that on the date of issuance of the patta, the plaintiff was minor and his father was sarpanch who without following any procedure of law and with intention to grab the plot, fabricated the patta. It is also submitted that the said patta was subsequently cancelled by the Gram Panchayat. It is also submitted that Rule 266 was not followed.

The trial court decreed the suit of the plaintiff by the impugned judgment and decree dated 22.12.2001. Being aggrieved against the judgment and decree of the trial court, the defendants preferred first appeal which was allowed by the first appellate court by the impugned judgment and decree dated 2.3.2002 after holding that the plaintiff was minor at the time when the patta was issued and his father was Sarpanch of Gram Panchayat and he not only participated in the proceedings but even signed the patta. After considering the entire facts and relevant law, the court below held that no title was conveyed by the patta and quashed the patta.

It is submitted by the learned counsel for appellant that the first appellate court committed serious error of law in dismissing the suit of the plaintiff. It is submitted that there is no bar against for issuing patta by Sarpanch in favour of his own son. It is further submitted that in a suit for mere injunction, the Court should not have considered the legality and validity of the patta.

Learned counsel for the respondents vehemently submitted that a writ petition was filed by the plaintiff before this Court being SBC Writ Petition No.6798/2003 which was decided by this Court by order dated 7.7.2005. In the said writ petition, learned counsel for the petitioner submitted that in pursuance of the Court's order dated 17.12.2003, the petitioner has deposited requisite amount and according to the petitioner, his case was considered for allotment of land in question but the matter was not decided by that time, therefore, after taking note of the above facts about the order of this Court dated 17.12.2003 and the contention of learned counsel for the petitioner, this Court disposed of the writ petition with a direction to the concerned authority to pass appropriate orders in relation to the claim of the petitioner about the allotment of the land in question in accordance with law within the stipulated period.

According to learned counsel for the respondents, the forgery is writ large and, therefore, no equitable relief could have been granted in favour of the appellant by the trial court and the appellate court rightly dismissed the

plaintiff's suit. It is also submitted that the forgery vitiates all the proceedings and in this case, the patta is null and void. It is also submitted that the patta can be declared void only on the basis of the fact that the plaintiff's own father participated in the patta proceedings and signed the patta issued in favour of his minor son. It is also submitted that the plaintiff himself founded his claim in the suit on the basis of said patta, therefore, now he cannot say that the Court should not have looked into validity of patta.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below. I also perused the order dated 7.7.2005 passed by this Court (by me) in SB Civil Writ Petition No.6798/2003 which was passed after the order dated 17.12.2003 passed by this Court in the said writ petition.

It appears from the facts of the case and which cannot be disputed now in the second appeal that the plaintiff was minor at the time of issuance of the patta and his father was in key position who could have influenced the patta proceedings, he participated in the patta proceedings and signed the patta also.

Without going into the exact law on the point in the Municipalities Act, this Court is of the opinion that in a matter of disposal of the property by the Gram Panchayat by Sarpanch in favour of any person, if he has interest in

other party, he cannot take part in that proceedings. Not only this, in this case, the first appellate court considered the reasons given in the judgment delivered in the case of Kailash Raj vs. State of Rajasthan & Ors. reported in 1984 WLN (UC) 175 and also considered the relevant provisions of law and thereafter reached to the conclusion that no right accrued in favour of the plaintiff on the basis of said patta. There is no force in the submission of learned counsel for the appellant that in a suit for mere injunction even if the plaintiff comes out with a case that his total foundation is patta, the Court cannot examine the legality and validity of the patta. If this argument is accepted, then the only conclusion will be that plaintiff can take help of void document but cannot loose because of his conduct. The argument of learned counsel for the appellant further cannot be accepted as forgery vitiates all proceedings and in this case, vitiates proceedings of patta, grant of patta and patta itself.

In view of the above, I do not find any merit in the appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

At this stage, it may be observed that in the writ petition no.6798/2003, this Court has not decided anything in favour of the appellant and this Court only accepted the contention of the petitioner's counsel that in pursuance of the Court's order dated 17.12.2003, the petitioner has deposited requisite amount. This Court very specifically passed the order that now appropriate orders may be passed

in relation to the claim of the petitioner about the allotment of the land in question but in accordance with law only.

In view of the above, the decision of the writ petition no.6798/2003 dated 7.7.2005 is of no consequence in view of the decision in this second appeal.

(PRAKASH TATIA), J.

S.Phophaliya